

COPY

DOCKET FILE COPY ORIGINAL

Received

MAR 1 8 1999

Common Carrier Bureau
Network Service Division
Office of the Chief

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

RECEIVED

MAR 12 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Part 68 of the)
Commission's Rules)

CC Docket No. 96-28
File No. NSD-L-99-13

REPLY

BellSouth Corporation, on behalf of its affiliated companies, submits this reply to the comments filed in response to the Public Notice released in this docket on February 17, 1999.¹

I. IT WOULD BE INAPPROPRIATE FOR THE BUREAU TO CHANGE A COMMISSION RULE

As BellSouth stated in its comments, it is difficult to ascertain from the Public Notice and its reference to "numerous queries from manufacturers" why clarification of Part 68.2(j)(3) of the Commission's rules is necessary.² The current rule makes clear that equipment that does not meet the requirements of Part 68 (including important new surge protection requirements) may not be connected to the network after May 19, 1999. The comments filed by Matsushita Electronic Corporation of America ("Matsushita"), ACIL and the Telecommunications Industry Association (TIA) may shed light on the nature of the manufacturer's queries referenced in the Public Notice: rather than clarification, they seek a substantive change in the existing rules. These attempts must fail both as a matter of law and as not being in the public interest.

¹ *Common Carrier Bureau Seeks Comment on Compliance Deadline for Harmonization Regulations*, Public Notice, DA 99-342, File No. NSD-L-99-13 ("Public Notice").

² BellSouth Comments at 2. Although the Bureau has received numerous inquiries from manufacturers, it is significant that only two manufacturers, and two associations, filed comments in this proceeding.

No. of Copies rec'd 2
List A B C D E

ACIL requests that the Bureau extend the current deadline for manufacturers to comply with Type B surge requirements until April 20, 2001.³ It is not credible that manufacturers, who have had a full eighteen months to come into compliance with the Commission's requirements, should attempt double that time to come into compliance with the straightforward requirements adopted by the Commission in 1997. Moreover, ACIL's request is, on its face, legally deficient and contrary to the public interest.

In the first instance, ACIL's request constitutes more than a mere comment on the Bureau's unilateral request for comment on whether Part 68.2(j)(3) of the Commission's rules should be clarified. It constitutes an untimely petition for reconsideration of the Commission's Rules,⁴ namely, a request for reconsideration of the grandfather date. The deadline for petitions for reconsideration are statutory, and cannot be waived by the Commission, let alone the Bureau.⁵

ACIL's request could arguably be construed as a request for a waiver of the Commission's current grandfather date, but such a request is also insufficient. In the first instance, only the Commission can waive its rules, and then only for good cause shown.⁶ ACIL's comments are addressed, of course, to the Common Carrier Bureau in response to the Public Notice. ACIL has not shown that the Common Carrier Bureau has been delegated with requisite authority to waive the requirements of Part 68.2(j)(3) of the Commission's rules. Nor

³ ACIL Comments at 5.

⁴ 47 U.S.C. § 405(a) ("A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.")

⁵ Telephone Number Portability, *Second Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21204, 21230-21231 (1998).

⁶ 47 C.F.R. § 1.3.

has good cause been shown. ACIL merely states that it “is given to understand that redesigning the interface circuit to survive the surge Type B would pose some burdens to manufacturers.”⁷

Such an unsupported statement cannot constitute good ground for a Commission waiver.⁸ There is no evidence presented to indicate why such redesigning has not already been accomplished, or could not have been accomplished pursuant to the existing rules. Nor is there any explanation of the nature of the burdens allegedly imposed on manufacturers. There is no evidence of the cost or technical achievability of any redesign efforts. There is no argument set forth as to why, on balance, it is in the public interest for the Commission to allow consumers to continue to suffer with substandard terminal equipment vulnerable to lightning strikes. Indeed, ACIL emphasizes the “vast number of complaints received by the FCC on terminal equipment’s operational failures after lightning storms,” and notes that the new rules were adopted “primarily to alleviate those complaints.”⁹ ACIL concedes that, at some point, equipment must comply with the Commission’s surge protection requirements; to allow otherwise would “perpetrate the field problems that the surge Type B of the Harmonized Rules was intended to avoid.”¹⁰

BellSouth has described the injurious effects that these field problems have on local exchange carrier (LEC) operations.¹¹ The failure of network terminal equipment to properly respond to lightning surges, which the FCC’s Type B requirements appropriately address,

⁷ ACIL Comments at 3.

⁸ See Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Requests by SBC, Southern New England Telephone, and GTE to Extend Waiver of Coding Digit Requirement, CC Docket No. 95-116, *Order* DA 98-2644 (December 31, 1998)(Holding that unsupported eleventh hour request for extension of previously granted waiver, leaving a number of questions unanswered and in need of further explanation and supporting information, does not constitute good cause for extending waiver).

⁹ ACIL Comments at 2.

¹⁰ *Id.* at 3.

¹¹ BellSouth Comments at 2.

inevitably results in trouble calls placed to LECs. These trouble calls, in turn, generate significant network problems in the form of unfounded customer network complaints. Despite the fact that the trouble arises from the manufacture, sale and installation of substandard and non-compliant terminal equipment, LECs are nevertheless exposed to substantial expenses arising out of such trouble calls. These expenses, which directly flow from the manufacturer's use of non-compliant equipment, rise to millions of dollars per year for BellSouth alone.

Finally, BellSouth believes that the Bureau has not been delegated authority to treat ACIL's request for a new compliance deadline as a petition for rulemaking.¹² Regardless of how ACIL's comments are construed, it is obvious that they have not made their case, either as a matter of law or as a matter of public interest, for further delay in the Type B requirements compliance date.

II. THE PARTIES' COMMENTS ARE MORE CONFUSING THAN THE COMMISSION'S RULE.

The comments of Matsushita and TIA purport to reveal ambiguities in the rule, and suggest changes that should arouse suspicion in the Bureau as to their true motives. BellSouth understands the Commission's grandfathering rule as simply allowing for the continued installation of previously manufactured equipment for a period of time that would allow manufacturers to deplete current inventories and come into compliance with the Commission's lightning protection requirements on a going forward basis. There was no controversy in the *Harmonization* proceeding concerning the adequacy of the eighteen-month transition period. Matsushita states that all unmodified terminal equipment should be grandfathered for life.¹³ TIA seems to imply that all equipment existing prior to adoption of the new surge protection rules has

¹² 47 C.F.R. § 0.291(g).

¹³ Matsushita Comments at 1 (¶ 4).

"already shown by experience not to cause harm to the network."¹⁴ As BellSouth has explained in its comments, its own experience is to the contrary. There is a significant amount of substandard equipment installed in the field that creates network problems. Both comments appear to seek to grandfather certain equipment longer than intended by the Commission, and, in effect, to nullify the eighteen-month transition period.

CONCLUSION

It is not in the public interest to allow the continued manufacture, importation and installation of substandard terminal equipment. The Bureau must not "extend" the grandfather provisions. Any clarification issued by the Bureau should emphasize the date certain on which all new network connections are to be compliant with the Commission's Part 68 Rules.

Respectfully Submitted,

BELLSOUTH CORPORATION

By:


M. Robert Sutherland
Theodore R. Kingsley

Its Attorneys

Suite 1700
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610
(404) 249-3392

Date: March 12, 1999

¹⁴

TIA Comments at 1.

CERTIFICATE OF SERVICE

I do hereby certify that I have this 12th day of March 1999 served the following parties to this action with a copy of the foregoing COMMENTS by hand delivery or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties listed below.

*Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

*Mr. Al McCloud
Network Services Division
Federal Communications Commission
2000 M Street, N. W., Suite 235
Washington, D.C. 20554

*International Transcription Service
1231 20th Street, N. W.
Washington, D.C. 20554

Mr. Joseph O'Neil
ACIL
1629 K Street, N.W., Suite 400
Washington, D.C. 20006

Diane Law Hsu, Esq.
Lucent Technologies
1825 Eye Street, N.W., Suite 1000
Washington, D.C. 20006

Mr. Richard Mullen
Project Manager
Matsushita Electric Corporation of America
Product Safety & Compliance Division
1 Panasonic Way, 4B-8
Secaucus, NJ 07094

Ms. Roberta E. Breden
Director, Technical and Regulatory Affairs
Telecommunications Industry Association
2500 Wilson Boulevard, Suite 300
Arlington, VA 22201


Juanita H. Lee

*** VIA HAND DELIVERY**